



WEB COPY



Crl.O.P.No.22961 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22961 of 2023

and

Crl.M.P.Nos.16102 & 16104 of 2023

1. M/s. Grayeye IT System Pvt Ltd,
No.18/88 Arya Gowda Road Extension,
Kodambakkam, Chennai – 600 024.

2. Thomas Antony

3. Sasidharan

... Petitioners

Vs.

M/s. Savex Technologies Pvt Ltd.
Represented by its Senior Advocate Manager Accounts,
Mr.Murali Viswanathan
Having Office at 5 &5/1, Montieth Road,
Egmore, Chennai – 600 008.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for records and quash the C.C.No.104 of 2021 pending on the file of Judicial Magistrate, Fast Tract Court, Alandur.

For Petitioners : Mr. G.Vairavasubramanian

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl. Side)



ORDER

WEB COPY

Petition filed to quash the private complaint initiated against the petitioners under Section 138 of Negotiable Instruments Act. Three fold argument was placed before this Court by the learned counsel for the petitioners. They are

(i) Complaint filed with a delay of thirteen days not properly explained and days of delay has been wrongly calculated as seven days.

(ii) The Cheque was given in blank as a security for the goods sold and delivered and not for any enforceable debt on the date of issuance of cheque.

(iii) Payments made towards the goods sold and delivered not properly taken into account and contrary to the statement of account. Cheque was presented for Rs.46,17,686 which goes contrary to the provisions of Negotiable Instruments Act.

2. According to the learned counsel for the petitioners, an endorsement as per section 15 and note under Section 56 of Negotiable Instruments Act ought to have been attached along with the subject cheque



admitting the subsequent payment made by the petitioners herein whereas the cheque for entire Rs.46,17,8686 presented for collection is contrary to the provisions of NI Act.

3. In support of his arguments, learned counsel for the petitioners relied upon the following three judgements.

(i) **Oriental Aroma Chemical Industries Ltd Vs. Gujarat Industrial Development Corporation & Others** in MANU/SC/0141/2010 dated **26.10.2010** for the point of limitation.

(ii) **Shree Corporation Vs. Anilbhai Bansal** in MANU/GJ/0379/2018 dated **23.03.2018** for the point of canvassing regarding endorsement and note under Section 50 of Negotiable Instruments Act.

(iii) **Dashrathbhai Tikambhai Patel Vs. Hitesh Mahendrabhai Patel and Others** in MANU/SC/1294/2022 dated **11.10.2022** for the point of cheque issued as security and also for the endorsement regarding part payment of the debt under Section 15 of Negotiable Instruments Act.



WEB COPY

4. All the judgements cited by the learned counsel for the petitioners are not relevant to the case in hand because admittedly, the transaction was in connection with the goods sold and delivered. Petitioners herein had given their cheque at the time of taking delivery of goods and given voucher stating that, cheque was given in blank for supply of materials for security purpose. Thereafter, it has been a running account between the complainant and accused. Having taken delivery of goods, balance is struck on 16.09.2020, when the last supply of material under the invoice No. BW1T12021 10527 dated 16.09.2020 to the tune of Rs. 71,64,204. The cheque which was given in blank as against the delivery of goods was presented for Rs.49,70,686.

5. Section 15 and 56 of Negotiable Instruments Act recording the part payment subsequent to the issuance of cheque can be put into force only if the cheque issued with specific amount mentioned. In case of blank cheque, question of part payment and endorsement will not arise, since, in this case, blank cheque was issued only for supply of goods and it is specifically mentioned in voucher that it is against the supply of goods as security.



6. In **Dashrathbhai Tikambhai Patel Vs. Hitesh Mahendrabhai**

Patel and Others cited supra, Hon'ble Supreme Court had made clear that, when a cheque given as security can be presented and criminal complaint under Section 138 of Negotiable Instruments Act can be launched. For better understanding, the relevant portion of the said judgement is extracted below:

17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. "Security" in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of amount, the cheque which is issued as security would mature for presentation and the drawee of the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other



provisions of N.I Act would flow.

7. The intimation regard fund insufficiency was received by the complainant on 10.06.2021. Statutory notice to the accused informing return of cheque was sent through registered post on 05.07.2021 and the same was received by the accused on 07.07.2021. The accused have replied on 19.07.2021. The complaint was presented on 31.08.2021.

8. In the complaint, at para (12), it is stated that, there is a delay of 7 days since the Office due to Covid -19 restrictions was working with limited staffs. Hence, delay of seven days in filing the complaint may be condoned.

9. As far as limitation is concerned, it is not that, the complainant had suppressed the delay in filing the complaint, or filed a complaint without any satisfactory explanation. The arithmetics calculating the delay of 7 days instead of 13 days is a matter within the prerogative of the trial Court which has taken cognizance of the offence to consider. Having satisfied with the reasons stated for the delay in filing the complaint and with the preview to the data of date of presentation of cheque and date of intimation from the bank and the date of statutory notice and date of reply and then the date of



Crl.O.P.No.22961 of 2023

complaint, the trial Court had taken the complaint and caused process.

10. Therefore, all the three grounds raised by the petitioners herein are not applicable to the facts of the case to quash the complaint initiated under Section 138 of Negotiable Instruments Act for the cheque issued to discharge the debt arising out of supply of material.

11. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

06.11.2023

Index : Yes/No
Neutral Citation : Yes/No
Sma

To

Judicial Magistrate, Fast Tract Court, Alandur



WEB COPY



Crl.O.P.No.22961 of 2023

Dr.G.JAYACHANDRAN,J.

Sma

Crl.O.P.No.22961 of 2023

06.11.2023